

## CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA  
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**DATE:** March 3, 2005

**TO:** Commissioners and Interested Persons

**FROM:** John Ainsworth, Deputy Director  
Gary Timm, District Manager

**SUBJECT:** (1) Proposed Major Amendment (1-04) to the Channel Islands Harbor Public Works Plan and;  
  
(2) Notice of Impending Development 1-05, Pursuant to the Channel Islands Harbor certified Public Works Plan (PWP) as amended by the proposed PWP amendment 1-04 referenced above.

For Public Hearing and Commission Action at the March 16, 2005  
Commission Meeting in Orange County

**SUMMARY AND STAFF RECOMMENDATION**

The amendment to the Public Works Plan (PWP) is proposed to allow for the construction of the Boating Instruction and Safety Center (BISC) on property owned by the County of Ventura located on the west side of the Channel Islands Harbor. The County Harbor Department has also submitted the corresponding Notice of Impending Development (NOID) to provide for construction of the proposed project upon certification of the PWP amendment. The project includes approximately 26,000 sq. ft. of exterior space, 24,000 sq. ft. of dock space, a two-story 19,000 sq. ft. building, and a one-story 1,000 sq. ft. maintenance/storage building.

The Ventura County Harbor Department submitted the amendment to its certified Channel Islands Harbor Public Works Plan (PWP) on October 28, 2004. On November 19, 2004, the Executive Director determined that the County's amendment submittal was in proper order and legally adequate to comply with the submittal requirements of Coastal Act Section 30605. Pursuant to Section 30605 of the Coastal Act, any proposed amendment to the certified PWP shall be submitted to, and processed by, the Commission in the same manner as prescribed for amendment of a local coastal program.

Relative to the proposed amendment, the Commission and the County have entered into an agreement that tolls any statutes of limitation applicable to the County's filing of litigation against the Commission over action taken by the Commission on the BISC

project at the February 2004 hearing until July 1, 2005. As part of the agreement the Commission agrees to hear and decide an application for a PWP amendment related to the BISC within six months of that application being determined complete and deemed filed by the Commission unless extended by future mutual agreement of both parties.

Coastal Act Section 30517 and California Code of Regulations Section 13535 (c) state that the Commission may extend for good cause any time limit for a period not to exceed one year. Therefore, in accordance with the agreement referenced above the Commission extended the 60-day time limit by six months in order to allow adequate time to review and analyze the amendment. The six-month time limit extension will expire on May 19, 2005 unless extended by agreement of the County and the Commission.

The Notice of Impending Development was received on February 25, 2005 and deemed filed on February 28, 2005.

Staff is recommending denial of the proposed PWP amendment as submitted followed by approval with 20 suggested modifications. Staff is recommending that the Commission determine that the impending development is consistent with the certified Channel Islands Harbor Public Works Plan with ten special conditions regarding (1) compliance with all required project modifications and mitigation measures; (2) replacement of lost boat slips caused by the project within the harbor; (3) protection of nesting and roosting herons; (4) night lighting restrictions; (5) revised plans for replacement of lost park area; (6) drainage and polluted runoff control; (7) erosion control and removal of debris; (8) Best Management Practices; (9) approval of PWP amendment; and, (10) future CDP for proposed dock, all of which are necessary to bring the development into conformance with the PWP.

### **STANDARD OF REVIEW**

Section 30605 of the Coastal Act and Article 14, Section 13356 of California Code of Regulations provides that where a public works plan is submitted prior to certification of the Local Coastal Program (LCP) for the jurisdiction affected by the plan the Commission's standard of review for certification is Chapter 3 of the Coastal Act. Although the land area within the Harbor is owned by the County, it lies within the jurisdiction of the City of Oxnard. The Commission certified the Public Works Plan in September 1986 prior to certification of the LCP for the Harbor area which was certified in December 1986. Therefore, the Commission's certification was based on consistency with Chapter 3. Section 30605 and Section 13357 of the Code of Regulations also states that where a plan or plan amendment is submitted after the certification of the LCP for the area any such plan shall be approved by the Commission only if it finds, after full consultation with the affected local government(s), that the proposed plan is in conformity with the certified LCP. Therefore, the standard of review for the proposed amendment to the Public Works Plan, pursuant to Section 30605 of the Coastal Act, is that the proposed plan amendment is in conformance with the certified Local Coastal Program for the City of Oxnard. Since the City's certified LCP

contains all applicable Coastal Act policies, conformance with applicable Chapter 3 policies of the Coastal Act is also required. PRC Section 30605 also states that any proposed amendment shall be processed in the same manner as prescribed for an amendment to a Local Coastal Program.

Sections 30605 & 30606 of the Coastal Act and Article 14, §13359 of the California Code of Regulations govern the Coastal Commission's review of subsequent development where there is a certified PWP. Section 13354 requires the Executive Director or his designee to review the notice of impending development (or development announcement) within five working days of receipt and determine whether it provides sufficient information to determine if the proposed development is consistent with the certified PWP. The notice is deemed filed when all necessary supporting information has been received.

Pursuant to Section 13359, within thirty working days of filing the Notice of Impending Development, the Executive Director shall report to the Commission the pendency of the development and make a recommendation regarding the consistency of the proposed development with the certified PWP. After public hearing, by a majority of its members present, the Commission shall determine whether the development is consistent with the certified PWP and whether conditions are required to bring the development into conformance with the PWP. No construction shall commence until after the Commission votes to render the proposed development consistent with the certified PWP.

### **PUBLIC PARTICIPATION**

Section 30503 of the Coastal Act requires public input in preparation, approval, certification and amendment of any Public Works Plan. The County of Ventura Board of Supervisors held a public hearing and approved the PWP amendment on October 19, 2004. Written comments were also received regarding the project from public agencies, organizations and individuals. The hearing was duly noticed to the public consistent with Sections 13552 and 13551 of the California Code of Regulations. Notice of the subject amendment has been distributed to all known interested parties.

### **PROCEDURAL REQUIREMENTS**

Because approval of the PWP amendment is subject to suggested modifications by the Commission, the County must act to accept the adopted suggested modifications pursuant to the requirements of Section 13547 of the California Code of Regulations, which provides for the Executive Director's determination that the County's action is legally adequate, within six months from the date of Commission action on this application before the PWP amendment shall be effective.

**I. STAFF RECOMMENDATION FOR DENIAL OF PWP AMENDMENT 1-04 AS SUBMITTED AND CERTIFICATION WITH SUGGESTED MODIFICATIONS**

**A. Denial as Submitted**

**MOTION:**     *I move that the Commission certify the Channel Islands Harbor Public Works Plan Amendment 1-04 as submitted.*

Staff recommends a **NO** vote. Failure of this motion will result in denial of the Public Works Plan Amendment 1-04 and the adoption of the following resolution and findings. The motion to certify passes only by an affirmative vote of a majority of the appointed Commissioners.

**RESOLUTION I:**

The Commission hereby denies certification of the Channel Islands Harbor Public Works Plan Amendment 1-04 and adopts the findings stated below on the grounds that the Amendment does not conform with the certified Local Coastal Program for the City of Oxnard. Certification of the Amendment would not comply with the California Environmental Quality Act because there are feasible alternatives or feasible mitigation measures or alternatives that would substantially lessen the significant adverse effects that the approval of the Amendment] would have on the environment.

**B. Certification with Suggested Modifications**

**MOTION:**     *I move that the Commission certify the Channel Islands Harbor Public Works Plan Amendment 1-04 if modified as suggested in the staff report.*

Staff recommends a **YES** vote. Passage of this motion will result in certification of the Public Works Plan Amendment 1-04 plan as modified. The motion to certify passes only by affirmative vote of a majority of the appointed Commissioners.

**RESOLUTION II:**

The Commission hereby certifies the Channel Islands Harbor Public Works Plan Amendment 1-04 as modified and adopts the findings stated below on the grounds that the Amendment as modified conforms with the certified Local Coastal Program for the City of Oxnard. Certification of the Amendment if modified as suggested complies with

the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Amendment on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the Amendment] on the environment.

### **SUGGESTED MODIFICATIONS**

The staff recommends the Commission certify the Public Works Plan Amendment only with the modifications as shown or described below. Language presently contained within the certified PWP is shown in straight type. Language recommended by Commission staff to be deleted is shown in ~~line-out~~. Language proposed by Commission staff to be inserted is shown underlined. Other suggested modifications to revise maps or figures are shown in *italics*.

The following policies relating to construction and continued operation of the Boating Instruction and Safety Center shall be added to the Public Works Plan:

Add to Chapter 4.5, Biological Resources – Policies (page 74):

#### Modification 1

Portions of Hollywood Beach west of the Harbor utilized by western snowy plovers and/or California least terns for nesting, breeding, and foraging are designated as Environmentally Sensitive Habitat Area. No activities associated with operation of the BISC shall be permitted to occur on or across Hollywood Beach during the nesting/breeding season for snowy plovers and least terns (March 1 – September 30). In carrying out this policy the Harbor Department shall consult with the US Fish and Wildlife Service.

#### Modification 2

The Harbor Department shall coordinate with the California Department of Fish and Game, the US Fish and Wildlife Service and the Army Corps of Engineers to develop and implement a long-term conservation plan for California least terns and western snowy plovers at Hollywood Beach. The conservation plan shall include management strategies that address Harbor education and outreach programs (including those associated with the BISC), beach maintenance activities, dredging, and designation of breeding areas for the least tern and snowy plover.

#### Modification 3

The Harbor Department shall avoid beach grooming activities at Hollywood Beach between January 1 and September 30 of each year unless authorized by the US Fish

and Wildlife Service. Removal of items not necessary to support insects and invertebrates that western snowy plovers feed upon is allowed provided that removal is not conducted during the breeding season. Motorized vehicles shall stay on the wet sand or along the south edge by the jetty during this period.

#### Modification 4

The Harbor Department shall install educational signs at access points to Hollywood Beach to inform beach users of “leash” laws and to discourage harmful activity within the nesting area for snowy plovers and least terns during the breeding season. If recommended by the U.S. Fish and Wildlife Service “symbolic” fencing (e.g. rope and stakes) may be installed to protect nests during the breeding season.

#### Modification 5

##### Construction of the Boating Instruction and Safety Center (BISC)

Commencement of construction shall not take place until a qualified biologist has determined the black-crowned night herons are no longer nesting. No Construction shall commence or ongoing exterior construction shall occur during the nesting season for black-crowned night herons (February through July). Construction improvements to the interior of the building may continue during the balance of the year if the biological monitor determines that interior construction will not adversely impact nesting or fledging activity and all construction noise is mitigated to the maximum feasible extent. Construction staging shall take place from the opposite side of the BISC away from the nesting trees. A qualified biologist shall monitor the site prior to, during (at least twice monthly), and after construction. The biologist shall submit a monitoring report after each nesting season during construction and once annually for 3 years after final construction is completed which addresses the status of black-crowned night heron nesting in the immediate vicinity of the BISC.

#### Modification 6

To avoid disturbance of nesting herons all lighting on the north side of the BISC building shall be of low intensity and directed downward and/or away from nesting trees.

#### Modification 7

##### Replacement of all lost boat slips within CIH

All recreational boat slips eliminated due to construction of the BISC project shall be replaced in kind (size and use) within the Channel Islands Harbor PWP jurisdiction. Replacement shall take place within 6 months of completion of BISC.

Modification 8

Replacement of lost park area from BISC construction

The County shall be responsible for the replacement of an equal or greater area of park to that lost to construction of the BISC within the immediate area of the project site in the Harbor. The replaced park area shall be equally accessible and usable by the public as the area lost to construction. The replacement of the park shall occur concurrently with construction of the BISC.

Modification 9

Page 5, 3<sup>rd</sup> paragraph. (Delete proposed addition of “Phase III basin” and “basin” and elimination of “built out” as follows:

With the completion of already approved ~~Phase III basin~~ projects along the West Channel, the Harbor ~~basin~~ will be completely ~~built out~~ built out. . . . The ~~Property Administration Agency Harbor Department~~ does not have plans for any major expansions or re-constructions of the Harbor ~~area basin area~~.

Modification 10

Page 22, - *Figure IV shall be revised to identify the Boating Instruction & Safety Center as proposed rather than existing at bottom of page as follows:*

Existing and/or Proposed Recreation/Access/Visitor Serving Facilities

Modification 11

Page 25, FUTURE WATERSIDE BOATING SUPPORT FACILITIES (for BISC at bottom): - *Table II shall be revised to account for change in number of recreational and live-aboard boating spaces due to construction of BISC as well as lateral dock space provided for BISC.*

Modification 12

Page 42, Public Parks: *Revise 2<sup>nd</sup> full sentence at top of page as follows:*

The ~~2.6-acre~~ linear Channel Islands Harbor Park is located on the western Harbor side, ~~consisting and consists~~ of all open turf and landscaped area, trees, ~~with~~ picnic tables, walkways and restroom facilities.

Modification 13

*Figures III (page 6), IV (page 22) and VII (page 35) shall be revised to clarify or reflect that the entire linear landscaped park along the west side of the Harbor is designated as*

*Public Park (with the exception of the portion of the existing park eliminated due to construction of BISC).*

#### Modification 14

Page 50, Recreation Policy 20 shall be revised as follows:

20. All areas designated as public parks and beaches in Figures [III](#), [IV](#), and [VII](#) of the Plan shall be protected as open space and shall not be developed or utilized for other uses without an amendment to the Plan, [accept as set forth in Policy 19](#).

#### Modification 15

Page 50, Visual Access Policy 22c. shall be revised as follows:

- c. At least 25% of the Harbor shall provide a view corridor that is to be measured from the first main road inland from the water line, which shall be at least 25 feet in width. View corridors shall be landscaped in a manner that screens and softens the view across any parking and pavement areas in the corridor. This landscaping, however, shall be designed to frame and accentuate the view, and shall not significantly block the view corridor. All redevelopment shall provide maximum views [in keeping with this policy. Other than the proposed Boating Instruction and Safety Center \(BISC\) identified in this plan, no new development within a designated view corridor shall occur without an amendment to the Public Works Plan.](#)

#### Modification 16

*Table III (page 51) shall be revised to incorporate results of parking lot survey conducted over 3-day Labor Day weekend, September 2004.*

#### Modification 17

Page 53, 3<sup>rd</sup> paragraph (proposed to be added by Harbor Department) under "[Recreational Boating](#)" shall be modified as follows:

[The Harbor Department will implement the recreational and public access policies of the Coastal Act as set forth in Public Resources Code Sections 30001.5, 30213 and 30224. One means of carrying out the Recreational Boating policies of the Coastal Act is by establishing a Boating Instruction and Safety Center on the west side of the Harbor as shown on Figures III, IV, V, and VII.](#)

#### Modification 18

Page 69, [Biological Resources](#), added paragraph under "Existing Conditions" shall be modified as follows:



Notwithstanding this man-made environment, several bird species, such as great blue herons and black-crowned night herons, utilize the trees in the Harbor for roosting and nesting. Although none of these species is listed as threatened or endangered, their presence is considered important. In addition, nearby Hollywood Beach west of the Harbor is designated as critical habitat for western snowy plover and California least tern.\*

\*double underline indicates language added to new language proposed to the PWP by the Harbor Department

#### Modification 19

Page 71, under "BIRDS", add black-crowned night herons, and western snowy plover and California least tern on adjacent Hollywood Beach.

#### Modification 20

Page 74, Section 4.5, Biological Resources, POLICIES shall be modified to add the following policies:

#### Water Quality Protection

5. Ensure that development is designed and managed to minimize the introduction of pollutants into the Channel Islands Harbor and surrounding coastal waters to the maximum extent practicable.

6. Ensure that development plans and designs incorporate appropriate Site Design, Source Control and Structural Treatment Control Best Management Practices (BMPs) to reduce pollutants and runoff from the proposed development to the maximum extent practicable. Structural Treatment Control BMPs shall be implemented when a combination of Site Design and Source Control BMPs are not sufficient to protect water quality.

7. Ensure that development minimizes erosion, sedimentation and other pollutants in runoff from construction-related activities to the maximum extent practicable. Ensure that development minimizes land disturbance activities during construction (e.g., clearing, grading and cut-and-fill), especially in erosive areas (including steep slopes, unstable areas and erosive soils), to minimize the impacts on water quality.

8. Ensure that development incorporates appropriate design elements and management practices to minimize adverse impacts to water quality related to boating facilities and boater waste in the Channel Islands Harbor to the maximum extent practicable. Boating in the Harbor shall be managed in a manner that protects water quality, and any persons or employees maintaining boats in slips

or using slips on a transient basis shall be made aware of water quality provisions.

## **II. STAFF RECOMMENDATION FOR APPROVAL OF NOTICE OF IMPENDING DEVELOPMENT WITH SPECIAL CONDITIONS**

**MOTION:**     *I move that the Commission determine that the development described in the Notice of Impending Development 1-05, as conditioned, is consistent with the certified Channel Islands Harbor Public Works Plan if amended in accordance with the suggested modifications.*

Staff recommends a **YES** vote. Passage of this motion will result in a determination that the development described in the Notice of Impending Development 1-05, as conditioned, is consistent with the certified Channel Islands Harbor Public Works Plan, as amended pursuant to PWP Amendment 1-04 in accordance with the suggested modifications, and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

### **RESOLUTION:**

The Commission hereby determines that the development described in the Notice of Impending Development 1-05, as conditioned, is consistent with the certified Channel Islands Harbor Public Works Plan, as amended pursuant to PWP Amendment 1-04, for the reasons discussed in the findings herein.

## **III. SPECIAL CONDITIONS**

### **1. Mitigation Measures identified during Environmental Review**

In accordance with the Ventura County Harbor Department's proposal to implement all mitigation measures identified in the Final Environmental Impact Report (EIR) for the Boating Instruction and Safety Center (BISC) dated December 2003, all mitigation measures and project modifications identified within the subject final EIR applicable to alternative 6.2B are hereby incorporated by reference as conditions of the Notice of Impending Development 1-05 unless specifically modified by one or more of the special conditions set forth herein.

### **2. Replacement of all lost boat slips within CIH**

All recreational boat slips eliminated due to construction of the BISC project shall be replaced in kind (size and use) within the Channel Islands Harbor PWP jurisdiction.

Replacement shall take place within 6 months of completion of the BISC and the new replacement slips shall require a Coastal Development Permit from the Commission.

### **3. Protection of Nesting and Roosting Herons**

Commencement of construction shall not take place until a qualified biologist has determined the black-crowned night herons are no longer nesting. No Construction shall commence or ongoing exterior construction shall occur during the nesting season for black-crowned night herons (February through July). Construction improvements to the interior of the building may continue during the balance of the year if the biological monitor determines that interior construction will not adversely impact nesting or fledging activity and all construction noise is mitigated to the maximum feasible extent. Construction staging shall take place from the opposite side of the BISC away from the nesting trees. A qualified biologist shall monitor the site prior to, during (at least twice monthly), and after construction. The biologist shall submit a monitoring report after each nesting season during construction and once annually for 3 years after final construction is completed which addresses the status of black-crowned night heron nesting in the immediate vicinity of the BISC.

### **4. Direction of lighting on north side of building away from nesting trees.**

To avoid disturbance of nesting herons all lighting on the north side of the BISC building shall be of low intensity and directed downward and/or away from nesting trees.

### **5. Revised Plans for showing replacement of lost park area.**

Prior to commencement of construction the County shall submit, for the review and approval of the Executive Director, a site plan showing the replacement of an equal or greater area of park to that lost to construction of the BISC within the immediate area of the project site in the Harbor. The replaced park area shall be equally accessible and usable by the public as the area lost to construction.

### **6. Drainage and Polluted Runoff Control Plan**

Prior to the commencement of development, the Harbor Department shall submit for the review and approval of the Executive Director, final drainage and runoff control plans, including supporting calculations. The plan shall be prepared by a licensed engineer and shall incorporate structural and non-structural Best Management Practices (BMPs) designed to control the volume, velocity and pollutant load of stormwater leaving the developed site. The plan shall be reviewed and approved by the consulting engineering geologist to ensure the plan is in conformance with geologist's recommendations. In addition to the specifications above, the plan shall be in substantial conformance with the following requirements:

- (a) Site design, source control, and treatment control BMPs shall be implemented to minimize water quality impacts resulting from the proposed project.

- (b) Parking lots shall be designed to minimize the offsite transport of pollutants that are deposited on parking lot surfaces. Parking lots shall be designed to reduce impervious land coverage of parking areas, infiltrate runoff before it reaches the storm drain system, and treat runoff before it reaches the storm drain system. The proposed parking lots for this project shall incorporate infiltration measures such as permeable pavement, infiltration basins, or other landscaped features to ensure that all runoff is infiltrated and/or treated onsite before it reaches the storm drain system, to the maximum extent feasible.
- (c) Development of the BISC shall be designed to control the runoff of pollutants from structures, parking and loading areas. Loading/unloading dock areas shall be covered or run-on and run-off of drainage shall be minimized. Under no circumstances are direct connections to the storm drains from depressed loading docks permitted. Repair/maintenance bays shall be indoors or designed in such a way that does not allow stormwater run-on or contact with stormwater runoff. Repair/maintenance bay drainage systems shall be designed to capture all washwater, leaks and spills and shall be connected to a sump for collection and disposal. Vehicle/boat/equipment wash areas shall be self-contained and/or covered, equipped with a clarifier, or other pretreatment facility, and properly connected to a sanitary sewer.
- (d) Outdoor material storage areas shall be designed to prevent stormwater contamination from stored materials. Materials with the potential to contaminate storm water shall be placed in an enclosure such as a cabinet, shed or similar structure that prevents contact with runoff or spillage to the storm water conveyance system or protected by secondary containment structures such as berms, dikes or curbs. The storage area shall be paved and sufficiently impervious to contain leaks and spills.
- (e) Trash storage areas shall be designed to prevent stormwater contamination by loose trash and debris. Trash container areas shall have drainage from adjoining roofs and pavement diverted around the area(s). Trash container areas shall be screened or walled to prevent off-site transport of trash.
- (f) Treatment control BMPs (or suites of BMPs) shall be designed to treat, infiltrate or filter the amount of stormwater runoff produced by all storms up to and including the 85<sup>th</sup> percentile, 24-hour runoff event for volume-based BMPs, and/or the 85th percentile, 1-hour runoff event, with an appropriate safety factor (i.e., 2 or greater), for flow-based BMPs.
- (g) Runoff shall be conveyed off site in a non-erosive manner.
- (h) Energy dissipating measures shall be installed at the terminus of outflow drains.
- (i) The plan shall include provisions for maintaining the drainage system, including structural BMPs, in a functional condition throughout the life of the approved development. Such maintenance shall include the following: (1) BMPs shall be inspected, cleaned and repaired when necessary prior to the onset of the storm season, no later than September 30<sup>th</sup> each year and (2) should any of the project's surface or subsurface drainage/filtration structures or other BMPs fail

or result in increased erosion, the Harbor Department or successor-in-interest shall be responsible for any necessary repairs to the drainage/filtration system or BMPs and restoration of the eroded area.

## **7. Erosion Control and Removal of Debris**

Prior to the commencement of development, the Harbor Department shall submit, for the review and approval of the Executive Director, an erosion and sediment control plan and Storm Water Pollution Prevention Plan for the construction phase of the project designed by a licensed landscape architect, licensed engineer, or other qualified specialist. The plans shall be reviewed and approved by the consulting engineering geologist or qualified County designee to ensure that the plans are in conformance with the consultants' recommendations and shall provide the following:

- (a) The project site shall be in compliance with State Water Resources Control Board NPDES Permit Waste Discharge Requirements for Construction Activity and shall not cause or contribute to significant adverse impacts to coastal resources.
- (b) No construction materials, debris, or waste shall be placed or stored where it may enter a storm drain or be subject to erosion and dispersion.
- (c) Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of construction.
- (d) The plan shall delineate the areas to be disturbed by grading or construction activities and shall include any temporary access roads, staging areas, and stockpile areas.
- (e) Construction debris and sediment shall be properly contained and secured on site with Best Management Practices (BMPs) to prevent the unintended transport of sediment and other debris into coastal waters by wind, rain or tracking. BMPs designed to prevent spillage and/or runoff of construction-related materials, and to contain sediment or contaminants associated with construction activities shall be implemented prior to the on-set of such activity. These BMPs shall include, but are not limited to: stormdrain inlets must be protected with sandbags or berms, sediment must be trapped on site using fiber rolls, silt fencing or sediment basins, disturbed areas must be stabilized with vegetation, mulch or geotextiles, all stockpiles must be covered, the storage, application and disposal of pesticides, petroleum and other construction and chemical materials must be managed and controlled, and adequate sanitary and waste disposal facilities must be provided. These erosion control measures shall be required on the project site prior to or concurrent with the initial grading and/or site preparation operations and maintained throughout the development process to minimize erosion and sediment from runoff waters during construction. All sediment should be retained on-site unless removed to an

appropriate approved dumping location either outside the coastal zone or to a site within the coastal zone permitted to receive fill.

- (f) The plan shall also include temporary erosion control measures should grading or site preparation cease for a period of more than 30 days, including but not limited to: stabilization of all stockpiled fill, access roads, disturbed soils and graded areas with geotextiles and/or mats, sand bag barriers, silt fencing; temporary drains and swales and sediment basins. These temporary erosion control measures shall be monitored and maintained until grading or construction operations resume.

## **8. Water Quality/Best Management Practices Program**

Prior to the commencement of development, the Harbor Department shall submit, for the review and approval of the Executive Director, a detailed Water Quality/Best Management Practices (BMP) Program for controlling adverse impacts to water quality related to the public boating facilities associated with this project. The plan shall demonstrate that boating in the project area will be managed in a manner that protects water quality and that persons or employees maintaining boats in slips or using slips on a transient basis are made aware of water quality provisions. The plan shall include, at a minimum, the following provisions:

### **a. Boat Maintenance Best Management Practices**

- Clean boat hulls above the waterline and by hand. Where feasible, remove the boats from the water and perform cleaning at a location where debris can be captured and disposed of properly.
- Detergents and cleaning products used for washing boats shall be phosphate-free and biodegradable, and amounts used shall be kept to a minimum.
- Detergents containing ammonia, sodium hypochlorite, chlorinated solvents, petroleum distillates or lye shall not be used.
- In-the-water hull scraping or any process that occurs underwater to remove paint from the boat hull shall be minimized to the maximum extent practicable.

### **b. Solid Waste Best Management Practices Related to Boat Maintenance**

- Boat maintenance and cleaning shall be performed above the waterline in such a way that no debris falls into the water.
- Clearly marked designated work areas for boat repair and maintenance shall be provided. Work outside of designated areas shall not be permitted.
- Hull maintenance areas, if provided, shall be cleaned regularly to remove trash, sanding dust, paint chips and other debris.
- Public boat facility patrons shall be provided with proper disposal facilities, such as covered dumpsters or other covered receptacles.

- Receptacles shall be provided for the recycling of appropriate waste materials.
- c. Hazardous Waste Best Management Practices
- Storage areas for hazardous wastes, including old gasoline or gasoline with water, oil absorbent materials, used oil, oil filters, antifreeze, lead acid batteries, paints, and solvents shall be provided.
  - Containers for used anti-freeze, lead acid batteries, used oil, used oil filters, used gasoline, and waste diesel, kerosene and mineral spirits which will be collected separately for recycling shall be provided in compliance with local hazardous waste storage regulations and shall be clearly labeled.
  - Signage shall be placed on all regular trash containers to indicate that hazardous wastes may not be disposed of in the container. The containers shall notify boaters as to how to dispose of hazardous wastes and where to recycle certain recyclable wastes.
- d. Sewage Pumpout System Best Management Practices
- Adequate sewage pumpout facilities to serve the proposed development shall be provided to prevent the overboard disposal of untreated sewage within the project area and surrounding waters.
- e. Public Education Measures

The Harbor Department shall distribute the Water Quality Management Plan to all users of the boat docks. Informative signage describing and/or depicting Best Management Practices for maintenance of boats and boating facilities consistent with those specified herein shall be posted conspicuously.

## **9. Approval of PWPA 1-04**

Commencement of development/construction of the proposed Boating Instruction and Safety Center shall not occur until the County has acted to accept all suggested modifications to PWP amendment 1-04 and the Executive Director of the Commission has formally concurred with said County action.

## **10. Coastal Development Permit**

Prior to commencement of construction the Harbor Department shall obtain a Coastal Development Permit from the Commission for the proposed dock and elimination of recreational boating slips located within the Commission's area of retained permit jurisdiction.

**III. FINDINGS FOR DENIAL OF THE PUBLIC WORKS PLAN AMENDMENT AS SUBMITTED AND APPROVAL OF THE PUBLIC WORKS PLAN AMENDMENT IF MODIFIED AS SUGGESTED AND APPROVAL OF THE RESPECTIVE NOTICE OF IMPENDING DEVELOPMENT, AS CONDITIONED.**

The following findings support the Commission's denial of the PWP amendment as submitted, and approval of the PWP amendment if modified as indicated in the *Suggested Modifications* and approval of the corresponding Notice of Impending Development, *as conditioned*. The Commission hereby finds and declares as follows:

**A. Amendment and Project Description and Background**

On September 19, 1986, the Channel Islands Public Works Plan (PWP) was effectively certified by the Commission. The purpose of the PWP, as certified, is to provide "a detailed and specific planning document to guide future Harbor development." Jurisdiction within the Channel Islands Harbor is shared by both the County of Ventura and the City of Oxnard. Oxnard's City limits extend to all Harbor land areas. Based on a previous agreement between the two governmental authorities and the Commission's certification of the Public Works Plan, the County assumed planning and permitting authority within the Harbor. Under the certified PWP, the County is responsible for issuing all permits for development within the Harbor permitted by the plan. For a project contained in the certified PWP, the Commission's review of a Notice of Impending Development is limited to determining that the development as proposed is consistent with the PWP, or imposing reasonable terms and conditions to ensure that the development conforms to the PWP.

Requirements for the level of information contained in a Public Works Plan are contained in Section 13353 of the California Code of Regulations, which states that a PWP "shall contain sufficient information regarding the kind, size, intensity and location of development activity intended to be undertaken pursuant to the plan". Such information includes: 1) the specific type of activity or activities proposed to be undertaken; 2) the maximum and minimum intensity of activity or activities proposed to be undertaken; 3) maximum size of facilities proposed to be constructed pursuant to the plan; and 4) the proposed location or alternative locations considered for any development activity or activities to be undertaken pursuant to the proposed plan. In other words the Coastal Act envisions that a Public Works Plan functions more as a Specific Plan or a master development permit in order for specific projects or activities described in the PWP to be approved quickly through the Notice of Impending Development Process at later dates with minimal review. Activities, projects, or facilities not specifically proposed in a Public Works Plan in the level of detail described above shall require an amendment to the certified PWP that must be approved by the Coastal Commission prior to approval and issuance of a Notice of Impending Development for said activity, project, or facility.

The Land Use Map contained in the PWP specifies land use designations and describes permitted uses within specific areas of the Harbor. The proposed BISC site is



designated *Visitor Serving Harbor Oriented (VSHO)*. The PWP states that “ the purpose of this designation is to provide for visitor serving uses and amenities which are either directly related to the boating activity within the Harbor, or ancillary to it.” Permitted uses include “picnicking and other passive recreation, lodging, dining, fast food and shopping in chandleries, gift shops and boutiques, motels, restaurants, convenience stores, gas stations, fire stations, community centers/meeting places, yacht clubs, park areas, marine museums and marine oriented research facilities.” Although the BISC is the type of use that appears to be consistent with the use designation it is not specifically referenced or described as a permitted use in the PWP, however. In addition, although the BISC has been rotated on the proposed project site to minimize encroachment into the designated public park, the project is still inconsistent with Policy 20 of the PWP which requires that all areas designated as public parks shall not be developed or utilized for other uses without an amendment to the plan.

The Commission has previously found that the BISC was not approved or intended for the specific proposed project site along the West Channel of the Harbor at the time the PWP was certified. In addition, the BISC is not specifically referenced as an existing or permitted structure in Table I of the PWP which provides for limiting expansion of existing and permitted structures in the Harbor. Therefore, in order for the BISC to be permitted pursuant to the PWP an amendment to the plan is required.

#### Amendment and Project Description

The proposed amendment and project subject to the Notice of Impending Development (NOID) is to authorize the construction and operation of a Boating Instruction and Safety Center (BISC) on a 0.84 acre parcel owned by the County of Ventura located on the west side of the Channel Islands Harbor between Harbor Boulevard and the Harbor (exhibits 2 & 5). The BISC would consist of approximately 26,000 sq. ft. of exterior space, 24,000 sq. ft. of dock space, an approximately 19,000 sq. ft. two-story building, and a one-story, 1,000 sq. ft. maintenance and storage building to provide for incidental maintenance of the sailing, rowing, kayaking, and canoeing vessels. The project includes a full ADA access ramp from the main building to the dock area.

The BISC would be available to California State University – Channel Islands (CSU-CI), the Channel Islands Marine Sanctuary, community colleges, public schools, community groups, and the general public. The County intends to operate the BISC in partnership with CSU-CI to provide programs in marine biology, ecology, coastal resources, and oceanography. These programs will be available to University students and to the general public through extended education classes. The facility will also provide training in sailing, rowing, kayaking, canoeing, and other aquatic skills to students at the University, local public schools and the public. Nominal fees will be charged for equipment rental, boating and safety classes, and education programs. A gathering and teaching facility on the second floor will be available to the general public on a fee basis. The proposed facility will be open to the general public.

There is significant public opposition to the project, particularly from residents living adjacent to the west side of the Harbor. As originally proposed, the BISC was to be constructed within a grassy area of the Harbor designated as Public Park in the PWP and would have required the removal of a number of nesting trees for Black-crowned Night Herons. In response to comments from Commission staff the County re-oriented the BISC building by 90 degrees to avoid the trees used for nesting activity and to significantly minimize intrusion into the park area. As a result, one non-nesting tree and approximately 1700 sq. ft. of grass area will be lost. Street access was also redesigned, however, to provide a small overall increase in green area of approximately .25 acres. Opponents contend that the amount of green area displaced is 2300 sq. ft. when the area to be fenced off by the BISC is considered. This alternative, identified as alternative 6.2B in the FEIR, was approved by the County as the preferred alternative. In its approval of alternative 6.2B, the County Board of Supervisors incorporated all EIR mitigation measures into the BISC project. The Board also required 10 Standard Conditions and 31 Project Modifications (Special Conditions) in its approval of the project.

Staff note: There are a number of proposed minor changes to the PWP involving correcting typos, punctuation, spelling, and page numbers etc. that do not relate directly to the BISC project. These changes are found throughout the PWP document and staff is recommending approval of these changes as submitted.

#### Department of Boating and Waterways Review

The project is proposed to be funded through a mix of state and local funds. The State Department of Boating and Waterways is contributing a significant portion of the funds necessary to construct the project. The Department of Boating and Waterways has reviewed the proposed project and commented on the proposed project including the proposed location on the west side of the Harbor.

The location of the BISC has become extremely controversial. There is opposition to siting the proposed BISC on the west side of the Harbor and opponents have argued that an eastside location is preferable. The Commission has been provided copies of letters from the Department of Boating and Waterways concerning location of the BISC (December 1, 2003 from Mike Ammon to Lyn Krieger, October 15, 2004 from Raynor Tsuneyoshi, Director to members of the Ventura County Board of Supervisor, and October 21, 2004 from Director Tsuneyoshi to Assemblyman Tony Strickland). [Exhibit 7] These letters all indicate a preference for locating the BISC on the west side of the Harbor in the proposed location. Safety concerns relative to wind direction were cited as one of many factors in the decision. Both the October 15 and 21 letters state "given the considerable safety concerns expressed by independent experts, we cannot recommend funding from the Department of Boating and Waterways for a BISC project on the harbor's east side." Staff recently contacted the Department to confirm this position and in an e-mail dated February 28, 2005 Director Tsuneyoshi stated that the Department continues to prefer the Harbor west side location for the BISC and that the Department's position on funding has not changed.

**B. Consistency with City of Oxnard certified Local Coastal Program**

The Oxnard LCP was effectively certified by the Commission in April 1985; however, certification of an LCP for the Channel Islands Harbor was deferred creating an Area of Deferred Certification (ADC). The PWP for the Harbor was certified by the Commission in September of 1986 prior to certification of an LCP for the area. Subsequently, the Commission certified an LCP for the City's Harbor ADC in December 1986. As previously stated, pursuant to PRC Section 30605 of the Coastal Act and Article 14, Section 13357 of the California Code of Regulations, where a plan or plan amendment is submitted after certification of the LCP for the jurisdiction over the area (the City of Oxnard) any such plan amendment shall be approved by the Commission only if it finds, after consultation with the affected local government, that the proposed plan amendment is in conformance with the certified LCP. As also stated, the City's LCP contains all applicable Coastal Act policies which the plan amendment is subject to as well.

The Commission has received a letter from the City of Oxnard Development Services Director (exhibit 6) dated February 4, 2005 concerning the proposed BISC's consistency with the City's certified LCP. In the letter the City states its determination that the BISC is consistent with the City's certified LCP and provides substantiation for that position. The letter notes that the certified LCP emphasizes recreational boating and that sailing schools are listed as conditionally permitted uses. Other policies encourage the maximization of public access and recreational boating opportunities and provide for the promotion and protection of water-related uses. The City notes that there are no policies prohibiting new development in the harbor although the existing PWP can be interpreted as such (which is the basis of the submittal of the PWP amendment to allow the project). In addition to the issue of build-out of the harbor, the City also addresses designation and use of the park area on the west side of the harbor and maintenance of view corridors in the harbor and concludes that the BISC project is consistent with LCP policies. In a letter dated February 6, 2003 to the Director of the Harbor Department (exhibit 6) the City notes that the BISC site is zoned HCI (Harbor, Channel Islands) in the certified coastal zoning ordinance and that "sailing or SCUBA schools and marine-related museums are listed as conditionally permitted uses in this zone." The City concludes that the BISC is consistent with this zoning designation.

**C. Biological Resources**

The certified LCP for the City of Oxnard contains Section 30240 of the Coastal Act which provides for the protection of Environmentally Sensitive Habitat Areas:

Section 20240

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

The proposed BISC is located on the western side of the Harbor in an area comprised predominantly of paved areas for parking and visitor-serving uses. A landscaped linear park exists adjacent to Harbor waters and a public walkway that parallels Harbor Boulevard. The landscaped area includes several large non-native trees that are used by black-crowned night herons for nesting. Existence of the heron rookery has been confirmed by the California Department of Fish and Game (DFG). Nests were found throughout the Harbor. Great blue herons also have been found nesting in Cypress trees in the Harbor away from the proposed BISC site.

As stated in the FEIR the black-crowned night heron is a fairly common local resident of lowlands and foothills and very common locally in large nesting colonies. The herons are not listed or proposed for listing as threatened or endangered species. The federal Migratory Bird Treaty Act provides protection for individual black-crowned night herons and their active nests, however. The California Fish & Game Code also prohibits direct take of individual birds and their active nests. The FEIR states that in southern and central California the species nest in numerous types of trees, tall shrubs, and dense emergent marsh vegetation and is widely known to nest in City parks. The species is noted for its tolerance of human activity, including noise, within its nesting environment. The FEIR states that the black-crowned night herons at Channel Islands Harbor have adjusted to the presence of human activity. The FEIR concludes that construction of the BISC project will not undermine or displace the black-crowned night heron colony in nesting trees on the west side of the Harbor due to the species resilience and acclimation to human activity and that the herons will reassemble after construction is completed. As proposed by the County, major construction will take place outside of the nesting season as a mitigation measure to avoid or minimize adverse impacts on the night herons. Site work and outdoor construction may not begin prior to August 1 unless a qualified biologist determines that nesting and fledging activity have been completed. The County required special conditions (mitigation measures) which have been incorporated into the approved project by the Harbor Department including special condition 15 which requires enforcing litter and trash standards during construction and ongoing operation of the BISC and special condition 30 regarding timing of commencement of and ongoing construction which is discussed below.

The certified PWP states that there are no terrestrial biological resources of significance within Channel Islands Harbor, that the area is completely developed, and that terrestrial vegetation consists entirely of introduced landscaping species. Bird species found in the Harbor identified in the PWP include great blue herons, double-breasted

cormorant, western grebes, brown pelicans, herring gulls, and California gulls. The PWP acknowledges that it is probable that many more migratory bird species use the Harbor during the year. Policy 2 in the Biological Resources chapter states “use of the marine environment shall be permitted to the extent that it does not adversely impact the biological productivity of Harbor and coastal waters.” Presently, trees within the linear park which parallels the west side of the Harbor along Harbor Boulevard are used by Black-crowned night herons for nesting and roosting. The heron rookery includes trees immediately adjacent to the proposed BISC project site but also extends well beyond the site into the park area and other areas of the Harbor. The project will extend to within 10 feet of the nearest nesting tree.

The consulting biologist for the proposed BISC has reviewed the revised plan (alternative 6.2B) and commented as follows:

*Importantly, the activity entrances and mobilization areas of this building are oriented to the parking lot side of the facility, not the tree side. This orientation will allow the nesting birds to coexist with the non-threatening human activities associated with the BISC program. I also continue to recommend that construction of the exterior components of the project (grading, framing, roofing and exterior sheeting) be limited to the non-breeding season, which is August through January. Construction improvements to the interior of the building could continue during the balance of the year, i.e., February through July, without disturbing the birds.*

As stated previously, the project has been revised to relocate the building so that only one non-nesting tree is lost. Although the County has found that there are several other trees in the Harbor available for nesting, in order to avoid impacts to herons caused by construction noise the County has incorporated a mitigation measure (County special condition 30) requiring that no construction shall commence during the nesting season for black-crowned night herons. If construction commences prior to or continues into a nesting season the County has required that six nesting trees adjacent to the BISC site be covered with netting to prevent herons from using the trees for nesting during construction. Prior to commencement of construction a qualified biologist is required to determine that black-crowned night herons are not nesting and that fledging will not be adversely affected by construction. It is anticipated that construction will take from 12 to 14 months to complete. The Commission is not convinced that covering nesting trees with netting and allowing construction to continue during the nesting season is the least damaging alternative. Nor is the Commission convinced that the herons will relocate to other trees in the harbor to avoid construction activity. The Commission also notes that the PWP does not contain policies to adequately protect the heron rookery from impacts associated with construction and permanent placement of new buildings adjacent to the park. Had the PWP anticipated future construction of a specific project in that location it is likely that the PWP would have contained additional protective policies in addition to Policy 2 cited above.

Therefore, the Commission is requiring PWP suggested modification 5 and NOID special condition 3 which prohibit all outside exterior construction during the nesting season of the night herons. Interior construction shall be allowed throughout the year if the consulting biological monitor determines that interior construction can be performed without adversely impacting nesting herons.

Opponents to the project cite a letter to Lyn Krieger, Director of the Harbor Department, from John P. Kelly, PhD, dated June 25, 2003, commenting on the Draft EIR for the BISC. Dr. Kelly suggests that it would not be possible to either avoid or mitigate significant adverse impacts on the heronry, given the close proximity of the BISC. Dr. Kelly further states that "disturbed colonies may or may not re-establish in nearby areas", that "heronries vary dramatically in their response to disturbance", and that "scientific efforts have been unable so far to explain this variability in ways that allow reliable prediction of the consequences of construction activities, increases in human presence, or special recreational events." The letter concedes that black-crowned night herons often nest in areas with human activity but that they "seem to be very sensitive to changes in human activity and will abandon nesting areas if disturbed." Dr. Kelly's letter asserts that "disturbed colonies may shift locally to adjacent trees but may also abandon colony sites completely" due to such causes as removal of trees, direct harassment, predators, and other types of disturbance. In addition, Dr. Kelly states that assertions made in the DEIR relative to relocation are not substantiated or documented. He recommends a setback of nearly 200 meters to avoid disturbance.

While it is true that the greater the distance of setback the lesser the chance of disturbance or impacts the Commission notes that the area of the proposed BISC is not pristine and has been subject to human intrusion for years yet the black-crowned night herons continue to nest in the area. While the degree of disturbance may be intensified somewhat by construction of the BISC there are alternative trees available for nesting in the near vicinity of the project. Further, the County has required planting of additional trees suitable for nesting in the Harbor by incorporating mitigation measures 1 - 4 into the project. While a large setback might be applicable in an area of otherwise undisturbed pristine habitat it is not possible in this case under the proposed development scenario. The County biological consultant maintains that the black-crowned night herons have demonstrated a high level of adaptability or tolerance to human caused impacts in the Harbor. (The degree of tolerance or adaptability of herons which become accustomed to nesting and roosting in large, undisturbed areas might be quite different, however.) It is possible that the introduction of an additional disturbance such as construction of the BISC so close to the nesting trees could cause a change in the level of tolerance of the herons, however. The biological consultant also notes that the primary food source for the herons, Harbor waters, will not be degraded or lessened by construction of the BISC. As previously noted, the proposed BISC project will be sited less than 10 feet away from the existing nesting trees. The degree of tolerance or adaptability of the herons to future development, which have become accustomed to nesting and roosting in the public park, cannot be accurately predicted and might be quite different, however, during or after construction of the BISC. Although it is not possible or necessary to provide a setback of 200 meters to avoid

disturbance to the heron colony other measures are feasible to provide a greater degree of protection for the herons at this location during and post construction.

The Commission's staff biologist, Dr. John Dixon, has reviewed the County biological consultant's report and agrees with its conclusions relative to the nesting and roosting activity of the black-crowned night herons near the BISC site. Due to the existence of numerous trees throughout the harbor available to the herons and level of tolerance and adaptability to humans and structures demonstrated in the past an additional setback from the trees is not necessary in this case. Nor do the trees within the Harbor meet the Coastal Act definition of Environmentally Sensitive Habitat. It is necessary that measures be taken during the nesting season to protect the herons during construction of the BISC, however.

For the reasons discussed above, the Commission finds that construction of the BISC consistent with alternative 6.2B and with all required mitigation measures and special conditions attached to this permit will not adversely impact the nesting of black-crowned night herons in the long run. The Commission is requiring compliance with PWP suggested modification 5 and NOID special condition 3 to prohibit commencement of construction or ongoing exterior construction of the BISC during the nesting season for black-crowned night herons (February through July). In addition, modification 5 and special condition 3 require biological monitoring during and after construction. PWP modification 6 and NOID special condition 4 require that all lighting on the north side of the BISC building be of low intensity and directed downward and away from the nesting trees. PWP modifications 18 and 19 add language to the PWP to acknowledge the existence and nesting activity of the herons within the Harbor.

The FEIR states that the western snowy plover and the California least tern use areas on nearby Hollywood Beach to rest or forage. Hollywood Beach is located west of the Harbor. According to the FEIR, snowy plovers roost on the beach and nest or attempt to nest in front of the dunes at the south end of the beach. In past years up to five nests have been observed. Hollywood Beach has been designated as critical habitat for the snowy plover. No nesting by California least tern has been observed at Hollywood Beach. Concerns have been raised that snowy plover and least tern habitat would be adversely affected by users of the BISC crossing the beach from the Harbor to the ocean. In response to these concerns the U.S. Fish and Wildlife Service was consulted and determined, in a March 25, 2003 letter to the County, that "the activities associated with BISC on Hollywood Beach are not likely to cause disturbance beyond that caused by current recreational use and beach grooming activities. Therefore, we concur with your determination that the proposed BISC would not result in the take of western snowy plovers or California least terns." The USFWS did recommend that the County take measures to protect portions of the beach used by these species. In approving the project the County required mitigation measure or County special condition 14 to be incorporated into the project, which states:

*In January of each calendar year, the Director, County of Ventura Harbor Department will consult with the USFWS. If the USFWS advises that a western*

*snowy plover nesting season is expected that year, the County of Ventura Harbor Department shall restrict crossing at the south end of Hollywood Beach for BISC activity during the months that correspond with the western snowy plover nesting season. Prior to recurring activities that cross the beach, the County of Ventura Harbor Department will consult with the USFWS to assure that the nesting season is considered complete.*

The Commission notes that the March 2003 letter from USFW to the County does not address current nesting activity by snowy plovers on Hollywood Beach that has been observed and that the PWP contains no specific policies which require mitigation or protective measures for western snowy plovers during nesting season. Therefore, for the reasons discussed above, the Commission finds that modifications to the PWP are necessary to provide protective measures to nesting snowy plovers and least terns and to designate nesting areas on Hollywood Beach as Environmentally Sensitive Habitat. PWP Modification 1 designates the nesting and breeding area as ESHA and prohibits activities associated with the BISC on or across Hollywood Beach during the nesting & breeding season (March 1 – September 30). This requirement is also included within Special Condition 1 to the NOID, (Mitigation Measures). Modification 2 provides for coordination with the California Department of Fish and Game, the U.S. Fish and Wildlife Service and the Army Corps of Engineers to develop a conservation plan for least terns and western snowy plovers that address Harbor education and outreach programs such as those provided by the BISC. Modification 3 provides that beach grooming by the Harbor Department at Hollywood Beach is restricted between January 1 and September 30 of each year unless authorized by the U.S. Fish and Wildlife Service. Modification 4 requires that educational signs be installed at beach access locations to inform beach users of leash laws and to discourage harmful activity within the nesting area.

Therefore, for the reasons discussed above, the Commission finds that the proposed PWP amendment, as modified, is consistent with the City of Oxnard LCP including applicable Coastal Act policies. In addition, the Commission finds that the Notice of Impending Development for the BISC project, subject to the recommended special conditions, is consistent with the PWP, as modified, relative to biological resources.

#### **D. Recreational Boating**

The certified City of Oxnard LCP contains Sections 30220, 30224, and 30234, of the Coastal Act relative to the provision and protection of recreational boating and commercial fishing facilities in the Harbor.

##### **Section 30220**

Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

##### **Section 30224**



Increased recreational boating use of coastal waters shall be encouraged, in accordance with this division, by developing dry storage areas, increasing public launching facilities, providing additional berthing space in existing harbors, limiting non-water-dependent land uses that congest access corridors and preclude boating support facilities, providing harbors of refuge, and by providing for new boating facilities in natural harbors, new protected water areas, and in areas dredged from dry land.

#### Section 30234

Facilities serving the commercial fishing and recreational boating industries shall be protected and, where feasible, upgraded. Existing commercial fishing and recreational boating harbor space shall not be reduced unless the demand for those facilities no longer exists or adequate substitute space has been provided. Proposed recreational boating facilities shall, where feasible, be designed and located in such a fashion as not to interfere with the needs of the commercial fishing industry.

Under the PWP existing commercial fishing and recreational boating harbor space shall not be reduced unless the demand for those facilities no longer exists or adequate substitute space has been provided (PRC Section 30234). Policy 3 of the Recreational Boating Section of the PWP states, in part:

*To provide for, protect and encourage increased recreational boating use of coastal waters, the following policies shall be implemented:*

- (a) Harbor recreational boating facilities shall be protected, and where possible upgraded in order to provide further opportunity to the recreational boater.*

Uncongested use and access to the ocean through Channel Islands Harbor waterways is a stated objective of the PWP. Policy 4 states:

*Any further development adjacent or near to Channel Islands Harbor which will create significant additional demand for boating access to the Harbor or its landside facilities will have adverse effects upon circulation and congestion, particularly at the Harbor entrance. As a condition to the consideration of any such development, the project proponent(s) shall be required to have completed a study evaluating traffic circulation and all related impacts. This shall include examination of the adequacy of the Harbor waterway and entrance to accommodate such demand and what measures are appropriate to mitigate these issues.*

The Harbor Department prepared “an assessment of vessel traffic congestion of the inland waters of Channel Islands Harbor”. The stated purpose of the study was to assess current and predicted vessel traffic congestion on the inland waters of Channel Islands Harbor. The study focused on the potential impact on current vessel traffic of

the proposed BISC relative to conducting boating classes within the waters of the Harbor. The study compared Channel Islands Harbor, Marina del Rey and Newport harbors. The study found that current vessel activities are well managed and conducted in a relatively safe environment. The study also found that the proposed BISC location would provide more than ample room for transiting vessel traffic to maneuver safely around students. The study concludes that that the Harbor will not likely reach a level of congested weekday vessel traffic and that, even on weekends, current vessel operating conditions should not be significantly impacted by the BISC.

Construction of the proposed BISC will cause the elimination or loss of three live-aboard spaces and 22 recreational boating spaces. The County has incorporated mitigation measure 3 and County special condition 28 into the proposed project which require the Harbor Department to offer transient boaters (non live-aboard) similar accommodations within the Harbor. In addition to compliance with Policy 3, stated above, relative to protecting recreational boating facilities in the Harbor, however, the Commission is also requiring PWP suggested modification 7 which requires that all recreational boating slips eliminated as a result of construction of the BISC be replaced in kind within the jurisdictional geographic boundaries of the PWP. Special Condition 2 to the NOID also requires in kind replacement of recreational boating slips within the Harbor. Because the construction of the proposed new dock space for the BISC and the corresponding elimination of existing recreational boating slips takes place within and/or over Harbor water which is within the Commission's area of retained permit jurisdiction special condition 10 to the NOID requires that a CDP from the Commission be required for the dock construction and elimination of boat slips prior to commencement of construction of the BISC.

Therefore, for the reasons discussed above, the Commission finds that the proposed PWP amendment, as modified, is consistent with the City of Oxnard LCP including applicable Coastal Act policies. In addition, the Commission finds that the Notice of Impending Development for the BISC project, subject to the recommended special conditions, is consistent with the PWP, as modified, relative to protection of recreational boating.

#### **E. Public Access and Recreation - Parkland**

The City of Oxnard LCP contains Coastal Act policies relative to the protection and provision of public access and recreation including lower cost visitor and recreational facilities:

Section 30213 states in part:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

Section 30221

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

In addition, existing Policy 20 to the Public Works Plan states:

*All areas designated as public parks and beaches in Figure IV of the Plan shall be protected as open space and shall not be developed or utilized for other uses without an amendment to the plan.*

Existing Policy 21 states:

*Harbor activities shall be clustered into locations appropriate to their use to protect and enhance public recreational activities in the Harbor. Land uses shall be compatible and consistent with the kind, location and intensity of development and resource protection and development policies prescribed by this Land Use Plan.*

A linear parkway borders Harbor Boulevard on the west side of the Harbor. As proposed, construction of the BISC will eliminate approximately 1700 sq. ft. of grassy area within the park to allow for placement of the BISC structure and related parking.

The BISC would be available to California State University – Channel Islands (CSU-CI), the Channel Islands Marine Sanctuary, community colleges, public schools, community groups, and the general public. The County intends to operate the BISC in partnership with CSU-CI to provide programs in marine biology, ecology, coastal resources, and oceanography. These programs will be available to University students and to the general public through extended education classes. The facility will also provide training in sailing, rowing, kayaking, canoeing, and other aquatic skills to students at the University, local public schools and the public. Nominal fees will be charged for equipment rental, boating and safety classes, and education programs. A gathering and teaching facility on the second floor will be available to the general public on a fee basis. The proposed facility will be open to the general public.

As previously indicated, there is significant public opposition to the project, particularly from residents living adjacent to the west side of the Harbor. As originally proposed, the BISC was to be constructed within the landscaped area of the Harbor designated as Public Park in the PWP and would have required the removal of a number of nesting trees for Black-crowned Night Herons. In response to comments from Commission staff the County re-oriented the BISC building by 90 degrees to avoid the trees used for nesting activity and to significantly minimize intrusion into the park area. As a result, one non-nesting tree and 1700 sq. ft. of grass area will be lost. Street access was also redesigned, however, to provide a small increase in green area. This alternative, identified as alternative 6.2B in the FEIR, was approved by the County as the preferred

alternative. In its approval of alternative 6.2B, the County Board of Supervisors incorporated all EIR mitigation measures into the BISC project. The Board also required 10 Standard Conditions and 31 Project Modifications (Special Conditions) in its approval of the project.

The Commission finds that the entire linear landscaped area along the west side of Harbor Boulevard is designated as Public Park in the PWP. Therefore, an amendment to the PWP is necessary to construct a portion of the BISC on the park. In this case, the Commission finds that the proposed BISC, as described above, is consistent with the type of uses envisioned by the City of Oxnard LCP and the applicable public access and recreation policies of the Coastal Act. For this reason the Commission finds that it is appropriate to displace a portion of the public park for the BISC facility provided that an equal amount of parkland is created in the immediate area. Displacement of public parks would not be appropriate for other kinds of uses in the Harbor, however. Therefore, modification 8 to the PWP amendment and special condition 5 to the NOID require the replacement of an equal or greater area of park that is lost to construction of the BISC within the immediate area of the project site. PWP modification 12 further defines the entire linear grass area on the western side of the Harbor as public park (minus the portion eliminated due to BISC construction) and modification 13 provides that all areas designated as public park shall not be developed unless an amendment to the PWP is approved.

Therefore, for the reasons discussed above, the Commission finds that the proposed PWP amendment, as modified is consistent with the public access and recreation policies of the certified City of Oxnard LCP. In addition, the proposed NOID, as conditioned, is consistent with the PWP as amended, relative to the public access and recreation policies of the Channel Islands Harbor Public Works Plan.

#### **F. Water Quality**

The City of Oxnard certified LCP contains Coastal Act policies 30230 & 30231 which are both applicable to the protection of water quality:

##### Section 30230 Marine resources; maintenance

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

##### Section 30231 Biological productivity; water quality

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms

and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

The Public Works Plan contains policies to protect the water quality and biological productivity of Harbor waters. Policy 1 requires a water quality monitoring and a biological monitoring program. Policy 2 states that “use of the marine environment shall be permitted to the extent that it does not adversely impact the biological productivity of Harbor and coastal waters. The proposed BISC will result in the addition of structural and parking lot development plus increased use of the site which have the potential to adversely impact coastal water quality through the removal of vegetation, increase of impervious surfaces, increase of runoff, erosion, and sedimentation, introduction of pollutants such as chemicals, petroleum, cleaning products, pesticides, and other pollutant sources.

Potential sources of pollutants such as chemicals, petroleum, cleaning agents and pesticides associated with new development, as well as other accumulated pollutants from rooftops and other impervious surfaces result in potential adverse effects to water quality to the Harbor and coastal waters. Such cumulative impacts can be minimized through the implementation of drainage and polluted runoff control measures. In addition to ensuring that runoff is conveyed from the site in a non-erosive manner, such measures should also include opportunities for runoff to infiltrate into the ground. Methods such as vegetated filter strips, gravel filters, and other media filter devices allow for infiltration.

In the case of this project, a majority of the project site has been previously developed with landscape and some hardscape features. The proposed development will result in an increase in impervious surface, which in turn decreases the infiltrative function and capacity of existing permeable land on site. The reduction in permeable space therefore leads to an increase in the volume and velocity of stormwater runoff that can be expected to leave the site. Further, pollutants commonly found in runoff associated with the proposed use include petroleum hydrocarbons including oil and grease from vehicles; heavy metals; synthetic organic chemicals; dirt and vegetation; litter; fertilizers, herbicides, and pesticides. The discharge of these pollutants to coastal waters can cause cumulative impacts such as: eutrophication and anoxic conditions resulting in fish kills and diseases and the alteration of aquatic habitat, including adverse changes to species composition and size; excess nutrients causing algae blooms and sedimentation increasing turbidity which both reduce the penetration of sunlight needed by aquatic vegetation which provide food and cover for aquatic species; disruptions to the reproductive cycle of aquatic species; and acute and sublethal toxicity in marine organisms leading to adverse changes in reproduction and feeding behavior. These impacts reduce the biological productivity and the quality of coastal waters, streams,

wetlands, estuaries, and lakes and reduce optimum populations of marine organisms and have adverse impacts on human health.

Therefore, in order to find the proposed development consistent with the water and marine resource policies of the City of Oxnard certified LCP and the PWP, the Commission finds it necessary to require the incorporation of Best Management Practices designed to control the volume, velocity and pollutant load of stormwater leaving the developed site. Critical to the successful function of post-construction structural BMPs in removing pollutants in stormwater to the Maximum Extent Practicable (MEP), is the application of appropriate design standards for sizing BMPs. The majority of runoff is generated from small storms because most storms are small. Additionally, storm water runoff typically conveys a disproportionate amount of pollutants in the initial period that runoff is generated during a storm event. Designing BMPs for the small, more frequent storms, rather than for the large infrequent storms, results in improved BMP performance at lower cost.

The Commission finds that sizing post-construction structural BMPs to accommodate (infiltrate, filter or treat) the amount of stormwater produced by all storms up to and including the 85<sup>th</sup> percentile, 24 hour storm event, in this case, is equivalent to sizing BMPs based on the point of diminishing returns (i.e. the BMP capacity beyond which, insignificant increases in pollutants removal (and hence water quality protection) will occur, relative to the additional costs. Therefore, the Commission requires the selected post-construction structural BMPs be sized based on design criteria specified in PWP modification 20 and special condition 6 to the NOID, and finds this will ensure the proposed development will be designed to minimize adverse impacts to coastal resources, in a manner consistent with the water and marine policies of the Oxnard LCP and PWP as amended.

Furthermore, interim erosion control measures implemented during construction will serve to minimize the potential for adverse impacts to water quality resulting from drainage runoff during construction and in the post-development stage. To ensure that proposed erosion control measures are properly implemented and in order to ensure that adverse effects to coastal water quality do not result from the proposed project, the Commission finds it necessary to require the Harbor Department, as required by modification 20 and Special Condition 7, to submit final erosion control plans. Additionally, the Commission finds that stockpiled materials and debris have the potential to contribute to increased erosion, sedimentation, and pollution. Therefore, consistent with the City of Oxnard LCP and PWP, in order to ensure that excavated material will not be stockpiled on site and that landform alteration and site erosion is minimized, Modification 20 and Special Condition 7 requires the Harbor Department to remove all excavated material, including debris resulting from the demolition of existing structures, from the site to an appropriate location and provide evidence to the Executive Director of the location of the disposal site prior to the commencement of development. Should the disposal site be located in the Coastal Zone a separate coastal development permit or notice of impending development shall be required.

The Commission also notes the potential for adverse impacts to water quality related to the public boating facilities associated with the BISC. Therefore, modification 20 and special condition 8 requires the Harbor Department to submit a water quality Best Management Practices (BMPs) program that demonstrates that boating activity in the project area will be managed in a manner that protects water quality.

The Commission finds that the proposed BISC project described in the proposed PWP amendment with the suggested modifications is consistent with the applicable policies of the City of Oxnard LCP. In addition, the Commission finds that the Notice of Impending Development, as conditioned, is consistent with the PWP, as amended, with regards to protection of water quality.

#### **G. Visual Resources – View Corridors**

The City of Oxnard LCP contains Coastal Act policy 30251 relative to the protection of scenic views:

##### **Section 30251 Scenic and visual qualities**

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

Construction of the BISC will take place within a view corridor designated by Figure VII in the Public Works Plan. Figure VII designates all of the linear park and most other areas along Harbor Boulevard as view corridors. Protected views are from the street east and north to the Harbor waters. Existing PWP policy 22c states that “at least 25% of the Harbor shall provide a view corridor that is to be measured from the first main road inland from the water line, which shall be at least 25 feet in width.

A controversy exists as to the interpretation of the view corridor map and policies. Opponents to the project maintain that the entire mapped view corridor is to be protected while the County interprets the policy as only requiring protection of 25% of the mapped view corridor.

The proposed BISC will result in some view blockage from Harbor Boulevard. Given the largely undeveloped nature of the west side of the Harbor the Commission finds that this view blockage is not significant. Further, the Commission notes that the BISC will provide additional benefits for public access and recreation. The Commission also finds

that the apparent conflict between the mapped view corridor and policy 22 in the PWP should be resolved before any additional new development in the Harbor is approved in the future. Therefore, the Commission is requiring suggested modification 15 to policy 22c which provides that, other than the proposed BISC, no new development within a designated view corridor shall occur without an amendment to the PWP. Only as modified does the Commission find that the proposed PWP amendment and corresponding NOID is consistent with the certified LCP for the City of Oxnard and the PWP, as amended.

## **I. California Environmental Quality Act**

Pursuant to Section 21080.9 of the California Environmental Quality Act ("CEQA"), the Coastal Commission is the lead agency responsible for reviewing Public Works Plans for compliance with CEQA. The Secretary of Resources Agency has determined that the Commission's program of reviewing and certifying PWPs qualifies for certification under Section 21080.5 of CEQA. In addition to making the finding that the PWP amendment is in full compliance with CEQA, the Commission must make a finding that no less environmentally damaging feasible alternative exists. Section 21080.5(d)(1) of CEQA and Section 13356 of the California Code of Regulations require that the Commission not approve or adopt a PWP, "...if there are feasible alternative or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment."

For the reasons discussed in this report, the PWP Notice of Impending Development 1-04, as conditioned, is consistent with the certified Channel Islands Harbor Public Works Plan if amended in accordance with the suggested modifications. In addition, the mitigation measures identified in the Final Environmental Impact Report (December 2003) have been incorporated by reference into the special conditions identified herein through Special Condition One (1), in addition to other special conditions which will lessen any significant adverse effect of the specific project components associated with Notice of Impending Development 1-04. There are no other feasible alternatives or mitigation measures available that would further lessen any significant adverse effect that the approval would have on the environment. The Commission has imposed conditions upon the respective Notice of Impending Development to include such feasible measures as will reduce environmental impacts of new development. As discussed in the preceding section, the Commission's special conditions bring the proposed projects into conformity with the PWP, if amended in accordance with the suggested modifications. Therefore, the Commission finds that the Notice of Impending Development 1-04, as conditioned herein, is consistent with CEQA and the Public Works Plan for Channel Islands Harbor if amended in accordance with the suggested modifications.